

The House Special Committee on Certificate of Need offers the following substitute to HB 249:

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 6 of Title 31 of the Official Code of Georgia Annotated, relating to state health planning and development, so as to provide that certain destination acute care cancer specialty hospitals are subject to certificate of need requirements; to revise certain definitions; to require certain destination acute care cancer specialty hospitals to provide indigent care as a condition of receiving a certificate of need; to provide considerations for certificates of need relating to certain destination acute care cancer specialty hospitals; to provide certain exemptions relating to certificates of need for new institutional health services; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 6 of Title 31 of the Official Code of Georgia Annotated, relating to state health planning and development, is amended in Code Section 31-6-2, relating to definitions, by adding new paragraphs (5.1) and (6.2) and revising paragraphs (6), (8), and (12) as follows:

"(5.1) 'Compliant destination acute care cancer specialty hospital' means a destination acute care cancer specialty hospital that has been in operation for less than 12 months or a destination acute care cancer specialty hospital whose:

(A) Certificate of need has not been revoked;

(B) Annual report for the preceding year demonstrates that its annual patient base is composed of a minimum of 65 percent of patients who reside outside of the state of Georgia; and

(C) Annual report for the preceding year demonstrates that it provided uncompensated indigent or charity care which met or exceeded 3 percent of its annual adjusted gross revenues. As used in this paragraph, 'uncompensated indigent or charity care' shall have the same meaning as in paragraph (6) of subsection (a) of Code Section 31-6-40.2."

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“(6) 'Consumer' means a person who is not employed by any health care facility or provider or any destination acute care cancer specialty hospital and who has no financial or fiduciary interest in any health care facility or provider or any destination acute care cancer specialty hospital.”

“(6.2) 'Destination acute care cancer specialty hospital' means an institution with a licensed bed capacity of 50 or less which is primarily engaged in providing to inpatients and outpatients, by or under the supervision of physicians, diagnostic services and therapeutic service for medical diagnosis, treatment, and care or rehabilitation services for the rehabilitation from cancer; which is not owned in whole or in part by physicians; and whose annual patient base is composed of a minimum of 65 percent of patients who reside outside of the state of Georgia.”

"(8) 'Health care facility' means hospitals; other special care units, including but not limited to podiatric facilities; skilled nursing facilities; intermediate care facilities; personal care homes; ambulatory surgical or obstetrical facilities; health maintenance organizations; home health agencies; diagnostic, treatment, or rehabilitation centers, but only to the extent that subparagraph (G) or (H), or both subparagraphs (G) and (H), of paragraph (14) of this Code section are applicable thereto; and facilities which are devoted to the provision of treatment and rehabilitative care for periods continuing for 24 hours or longer for persons who have traumatic brain injury, as defined in Code Section 37-3-1. Such term shall not include destination acute care cancer specialty hospitals."

"(12) 'Hospital' means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such term includes public, private, psychiatric, rehabilitative, geriatric, osteopathic, and other specialty hospitals. Such term shall not include destination acute care cancer specialty hospitals."

SECTION 2.

Said chapter is further amended in Code Section 31-6-40, relating to certificate of need required for offering health care and exemptions from such requirement, by adding a new subsection as follows:

"(e)(1) From and after July 1, 2007, only such destination acute care cancer specialty hospitals and the new health services defined in subparagraphs (B) through (H) of paragraph (14) of Code Section 31-6-2 the destination acute care cancer specialty hospital desires to offer initially as are found by the department to be needed using the

1 considerations set forth in subsection (b.1) of Code Section 31-6-42 shall be offered in
2 this state.

3 (2) Any destination acute care cancer specialty hospital that has received a certificate of
4 need to operate such a facility shall be required to obtain an additional certificate of need
5 in order to offer new institutional health services as defined only in subparagraph (A)
6 paragraph (14) of Code Section 31-6-2. Any compliant destination acute care cancer
7 specialty hospital shall not be required to obtain an additional certificate of need in order
8 to offer new institutional health services as defined only in subparagraphs (B) through
9 (H) of paragraph (14) of Code Section 31-6-2; however, such compliant destination acute
10 care cancer specialty hospital must still provide all applicable information and all fees to
11 the department required by applicants who are required under this chapter to seek
12 certificates of need for new institutional health services as defined in subparagraphs (B)
13 through (H) of paragraph (14) of Code Section 31-6-2 and must give the department at
14 least 30 days' notice of each such new institutional health service prior to any offer, use,
15 purchase, expenditure, lease, acquisition, increase, conversion, or upgrade of any such
16 new institutional health service."

17 SECTION 3.

18 Said chapter is further amended in Code Section 31-6-40.1, relating to acquisition of health
19 care facilities, penalty for failure to notify the department, limitation on applications,
20 agreement to care for indigent patients, and penalties, as follows:

21 "31-6-40.1.

22 (a) Any person who acquires a health care facility or a destination acute care cancer
23 specialty hospital by stock or asset purchase, merger, consolidation, or other lawful means
24 shall notify the department of such acquisition, the date thereof, and the name and address
25 of the acquiring person. Such notification shall be made in writing to the department within
26 45 days following the acquisition and the acquiring person may be fined by the department
27 in the amount of \$500.00 for each day that such notification is late. Such fine shall be paid
28 into the state treasury.

29 (b) The department may limit the time periods during which it will accept applications for
30 the following health care facilities:

31 (1) Skilled nursing facilities;

32 (2) Intermediate care facilities; and

33 (3) Home health agencies,

34 to only such times after the department has determined there is an unmet need for such
35 facilities. The department shall make a determination as to whether or not there is an

1 unmet need for each type of facility at least every six months and shall notify those
2 requesting such notification of that determination.

3 (c) The department may require that any applicant for a certificate of need agree to provide
4 a specified amount of clinical health services to indigent patients as a condition for the
5 grant of a certificate of need: provided, however, that each facility licensed by the
6 department as a destination acute care cancer specialty hospital shall provide
7 uncompensated indigent or charity care for residents of Georgia which meets or exceeds
8 3 percent of its annual adjusted gross revenues. As used in this subsection, 'uncompensated
9 indigent or charity care' shall have the same meaning as in paragraph (6) of subsection (a)
10 of Code Section 31-6-40.2. A grantee or successor in interest of a certificate of need or an
11 authorization to operate under this chapter which violates such an agreement, whether
12 made before or after July 1, 1991, shall be liable to the department for a monetary penalty
13 in the amount of the difference between the amount of services so agreed to be provided
14 and the amount actually provided. Any penalty so recovered shall be paid into the state
15 treasury.

16 (d) Penalties authorized under this Code section shall be subject to the same notices and
17 hearing for the levy of fines under Code Section 31-6-45."

18 SECTION 4.

19 Said chapter is further amended in Code Section 31-6-42, relating to qualifications for the
20 issuance of certificates of need, by revising subsection (a) and adding a new subsection (b.1)
21 to read as follows:

22 "(a) The written findings of fact and decision, with respect to the department's grant or
23 denial of a certificate of need, shall be based on the applicable considerations specified in
24 this Code section and reasonable rules promulgated by the department interpretive thereof.
25 The department shall issue a certificate of need to each applicant whose application is
26 consistent with the following considerations and such rules deemed applicable to a project,
27 except as specified in subsection (d) of Code Section 31-6-43:

28 (1) The proposed new institutional health services are reasonably consistent with the
29 relevant general goals and objectives of the state health plan;

30 (2) The population residing in the area served, or to be served, by the new institutional
31 health service has a need for such services;

32 (3) Existing alternatives for providing services in the service area the same as the new
33 institutional health service proposed are neither currently available, implemented,
34 similarly utilized, nor capable of providing a less costly alternative, or no certificate of
35 need to provide such alternative services has been issued by the department and is
36 currently valid;

(4) The project can be adequately financed and is, in the immediate and long term, financially feasible;

(5) The effects of new institutional health service on payors for health services, including governmental payors, are not unreasonable;

(6) The costs and methods of a proposed construction project, including the costs and methods of energy provision and conservation, are reasonable and adequate for quality health care;

(7) The new institutional health service proposed is reasonably financially and physically accessible to the residents of the proposed service area;

(8) The proposed new institutional health service has a positive relationship to the existing health care delivery system in the service area;

(9) The proposed new institutional health service encourages more efficient utilization of the health care facility proposing such service;

(10) The proposed new institutional health service provides, or would provide, a substantial portion of its services to individuals not residing in its defined service area or the adjacent service area;

(11) The proposed new institutional health service conducts biomedical or behavioral research projects or new service development which is designed to meet a national, regional, or state-wide need;

(12) The proposed new institutional health service meets the clinical needs of health professional training programs which request assistance;

(13) The proposed new institutional health service fosters improvements or innovations in the financing or delivery of health services, promotes health care quality assurance or cost effectiveness, or fosters competition that is shown to result in lower patient costs without a loss of the quality of care; and

(14) The proposed new institutional health service fosters the special needs and circumstances of health maintenance organizations.

This subsection shall not apply to applications for the construction, development, or other establishment of a destination acute care cancer specialty hospital or to applications by a compliant destination acute care cancer specialty hospital for other new institutional health services as defined in paragraph (14) of Code Section 31-6-2."

"(b.1) In the case of applications for the construction, development, or establishment of a destination acute care cancer specialty hospital, the need for such service shall be determined based solely on the following considerations:

(1) The proposed new destination acute care cancer specialty hospital demonstrates that its annual patient base will be composed of a minimum of 65 percent of patients who reside outside of the state of Georgia;

(2) The proposed new destination acute care cancer specialty hospital will provide uncompensated indigent or charity care which meets or exceeds 3 percent of its annual gross revenues. As used in this paragraph, 'uncompensated indigent or charity care' shall have the same meaning as in paragraph (6) of subsection (a) of Code Section 31-6-40.2.

(3) The proposed new destination acute care cancer specialty hospital will make available the latest technology in cancer diagnosis and treatment;

(4) The proposed new destination acute care cancer specialty hospital demonstrates a whole-person approach to treating patients using state of the art technology and scientifically based complementary and alternative medicine;

(5) The proposed new destination acute care cancer specialty hospital can be adequately financed and is, in the immediate and long term, financially feasible;

(6) The proposed new destination acute care cancer specialty hospital is reasonably financially and physically accessible;

(7) The proposed new destination acute care cancer specialty hospital will add economic value to the state;

(8) The proposed new destination acute care cancer specialty hospital demonstrates a willingness to contract with appropriate government payors;

(9) The proposed new destination acute care cancer specialty hospital will conduct biomedical or behavioral research projects or service development which is designed to meet a national or regional need;

(10) The proposed new destination acute care cancer specialty hospital will foster improvements or innovations in the financing or delivery of health services or promotes health care quality assurance; and

(11) The proposed new destination acute care cancer specialty hospital demonstrates that it will provide high quality care and will comply fully with relevant licensure and accreditation standards.

The grant of a certificate of need for the construction, development, or other establishment of a destination acute care cancer specialty hospital shall constitute a certificate of need to the hospital to offer, use, purchase, expend, lease, acquire, increase, convert, or upgrade all new institutional health services, except for a new institutional health service as defined in subparagraph (A) of paragraph (14) of Code Section 31-6-2, without the necessity of applying for a new or additional certificate of need. The destination acute care cancer specialty hospital shall provide all applicable information and all fees to the department required by applicants who are required under this chapter to seek certificates of need for new institutional health services as defined in subparagraphs (B) through (H) of paragraph (14) of Code Section 31-6-2 and shall give the department at least 30 days' notice of each

new institutional health service prior to any offer, use, purchase, expenditure, lease, acquisition, increase, conversion, or upgrade of any such new institutional health service."

SECTION 5.

Said chapter is further amended in Code Section 31-6-45, relating to revocation of certificate of need and enforcement, as follows:

"31-6-45.

(a) The department may revoke a certificate of need after notice to the holder of the certificate and a fair hearing pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' for the following reasons:

(1) Failure to comply with the provisions of Code Section 31-6-41; ~~or~~

(2) The intentional provision of false information to the department by an applicant in that applicant's application; or

(3) In the case of a holder of a certificate of need for a destination acute care cancer specialty hospital, failure to maintain a patient base that is composed of a minimum of 65 percent of patients who reside outside of the state of Georgia or failure to provide uncompensated indigent or charity care which meets or exceeds 3 percent of its adjusted annual gross revenues. As used in this paragraph, 'uncompensated indigent or charity care' shall have the same meaning as in paragraph (6) of subsection (a) of Code section 31-6-40.2.

The department may not, however, revoke a certificate of need if the applicant changes the defined location of the project within the same county less than three miles from the location specified in the certificate of need for financial reasons or other reasons beyond its control, including, but not limited to, failure to obtain any required approval from zoning or other governmental agencies or entities, provided such change in location is otherwise consistent with the considerations and rules applied in the evaluation of the project.

(b) Any health care facility offering a new institutional health service without having obtained a certificate of need and which has not been previously licensed as a health care facility shall be denied a license to operate.

(c) In the event that a new institutional health service is knowingly offered or developed without having obtained a certificate of need as required by this chapter, ~~or~~ the certificate of need for such service is revoked according to the provisions of this Code section, or the requirements of paragraph (2) of subsection (e) of Code Section 31-6-40 have not been met by the destination acute care cancer specialty hospital, a facility or applicant may be fined an amount not to exceed \$5,000.00 per day for every day that the violation of this chapter has existed and knowingly and willingly continues; provided, however, that the expenditure

or commitment of or incurring an obligation for the expenditure of funds to take or perform actions not subject to this chapter or to acquire, develop, or prepare a health care facility site for which a certificate of need application is denied shall not be a violation of this chapter and shall not be subject to such a fine. The commissioner of the department shall determine, after notice and a hearing, whether the fines provided in this Code section shall be levied.

(d) In addition, for purposes of this Code section, the State of Georgia, acting by and through the department, or any other interested person, shall have standing in any court of competent jurisdiction to maintain an action for injunctive relief to enforce the provisions of this chapter."

SECTION 6.

Said chapter is further amended in Code Section 31-6-45.1, relating to revocation of certificate of need and enforcement, by revising subsection (a) as follows:

"(a) A health care facility or destination acute care cancer specialty hospital which has a certificate of need or is otherwise authorized to operate pursuant to this chapter shall have such certificate of need or authority to operate automatically revoked by operation of law without any action by the Department of Community Health when that facility's permit to operate pursuant to Code Section 31-7-4 is finally revoked by order of the Department of Human Resources. For purposes of this subsection, the date of such final revocation shall be as follows:

(1) When there is no appeal of the order pursuant to Chapter 5 of this title, the one hundred and eightieth day after the date upon which expires the time for appealing the revocation order without such an appeal being filed; or

(2) When there is an appeal of the order pursuant to Chapter 5 of this title, the date upon which expires the time to appeal the last administrative or judicial order affirming or approving the revocation or revocation order without such appeal being filed.

The Department of Community Health may become a party to any judicial proceeding to review a decision by the Department of Human Resources to revoke such a permit."

SECTION 7.

Said chapter is further amended in Code Section 31-6-45.2, relating to termination by health care facility of participation as provider of medical assistance and monetary penalties, by revising subsection (a) as follows:

"(a) Any proposed or existing health care facility or destination acute care cancer specialty hospital which obtains a certificate of need on or after April 6, 1992, based in part upon assurances that it will participate as a provider of medical assistance, as defined in

1 paragraph (6) of Code Section 49-4-141, and which terminates its participation as a
2 provider of medical assistance, shall be subject to a monetary penalty in the amount of the
3 difference between the Medicaid covered services which the facility agreed to provide in
4 its certificate of need application and the amount actually provided; provided, however,
5 that this Code section shall not apply if:

6 (1) The proposed or existing health care facility's certificate of need application was
7 approved by the Health Planning Agency prior to April 6, 1992, and the Health Planning
8 Agency's approval of such application was under appeal on or after April 6, 1992, and
9 the Health Planning Agency's approval of such application is ultimately affirmed;

10 (2) Such facility's participation as a provider of medical assistance is terminated by the
11 state or federal government; or

12 (3) Such facility establishes good cause for terminating its participation as a provider of
13 medical assistance. For purposes of this Code section, 'good cause' shall mean:

14 (A) Changes in the adequacy of medical assistance payments, as defined in paragraph
15 (5) of Code Section 49-4-141, provided that at least 10 percent of the facility's
16 utilization during the preceding 12 month period was attributable to services to
17 recipients of medical assistance, as defined in paragraph (7) of Code Section 49-4-141.
18 Medical assistance payments to a facility shall be presumed adequate unless the
19 revenues received by the facility from all sources are less than the total costs set forth
20 in the cost report for the preceding full 12 month period filed by such facility pursuant
21 to the state plan as defined in paragraph (8) of Code Section 49-4-141 which are
22 allowed under the state plan for purposes of determining such facility's reimbursement
23 rate for medical assistance and the aggregate amount of such facility's medical
24 assistance payments (including any amounts received by the facility from recipients of
25 medical assistance) during the preceding full 12 month cost reporting period is less than
26 85 percent of such facility's Medicaid costs for such period. Medicaid costs shall be
27 determined by multiplying the allowable costs set forth in the cost report, less any audit
28 adjustments, by the percentage of the facility's utilization during the cost reporting
29 period which was attributable to recipients of medical assistance;

30 (B) Changes in the overall ability of the facility to cover its costs if such changes are
31 of such a degree as to seriously threaten the continued viability of the facility; or

32 (C) Changes in the state plan, statutes, or rules and regulations governing providers of
33 medical assistance which impose substantial new obligations upon the facility which
34 are not reimbursed by Medicaid and which adversely affect the financial viability of the
35 facility in a substantial manner."

SECTION 8.

Said chapter is further amended in Code Section 31-6-70, relating to reports to the department by hospitals, by revising subsection (a) as follows:

"(a) There shall be required from each hospital and each destination acute care cancer specialty hospital in this state an annual report of certain health care information to be submitted to the department. The report shall be due on the last day of January and shall cover the 12 month period preceding each such calendar year."

SECTION 9.

This Act shall become effective on July 1, 2007.

SECTION 10.

All laws and parts of laws in conflict with this Act are repealed.